MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SUO MOTU CONTEMPT PETITION NO. 6 OF 2006
IN
WRIT PETITION NO. 637 OF 2001

HIGH COURT ON ITS OWN MOTION

Vs.

Mrs. OMANA SOMRAJ .. CONTEMNOR

Dr. F. R. Shaikh, Addl. PP for State

Mr. Mohan Pilla with S.M. Kamble for contemnor

Ms. Madhavi Pilla as respondent_

CORAM: **SMT. RANJANA DESAI &**

SMT. R.S. DALVI, JJ.

DATE: **JULY 31, 2007**.

ORAL JUDGMENT:-(Smt. Ranjana Desai, J.)

. Criminal Writ Petition No. 637 of 2001 is filed by one Mrs. Omana Somraj praying that order dated 14/12/2000 passed by the Competent Authority (Rent Act), Konkan Division, Mumbai, in Case No. 26 of 1999 be set aside. By the impugned order the petitioner was directed to handover vacant possession of the suit premises to the applicant Smt. Krishnabai Babu Kontam, who is respondent 1 in writ petition.

2. On 10/4/01, the learned Single Judge of this court (F. I. REBELLO, J.) passed following order:

. "Before issuing notice as to why proceedings in contempt should not be initiated against the petitioner herein, petitioner to show cause as to why proceedings in contempt should not be initiated against the petitioner as the petitioner has made serious allegations as to the maintenance of Roznama. The Roznama has been produced. The roznama on the date purported not to have been written is found written in the record. Petitioner not present when the matter is called out.

. Office to issue notice to the petitioner returnable on 23rd April, 2001."

3. It appears from the order that the learned Judge was of the opinion that the allegations made by the petitioner about the maintenance of Roznama in the Competent Authority’s court were baseless and in fact the Roznama on the date purported not to have been written was found written in the record. It is in these circumstances that contempt notice was issued to the contemnor, asking her to

show cause as to why proceedings in contempt should not be initiated against her.

4. Pursuant to this order the contemnor has filed affidavit in reply explaining under what circumstances such averments regarding improper maintenance of roznama were made in her affidavit dated 7/8/01. The contemnor has at the outset tendered unconditional apology for not remaining present in the court on 10/4/01 when the matter was called out. She has further stated that this court had orally directed her advocate to file a detailed affidavit justifying certain allegations of serious nature made by her. She has further stated that she could not contact her advocate though she was informed that such affidavit needs to be filed. She instructed her advocate to do the needful in the matter. Thereafter her advocate took inspection of the trial court proceedings and informed her about some suspicion about certain irregularities and on the basis of the said information she made the allegations. She has however stated that she has no intention of whatsoever nature to undermine the authority of the court or the judiciary, however, as a duty bound citizen it was her bounden duty and social

obligation to place before this court facts which she felt indicated that the record was not maintained properly. She has then given the details of the alleged irregularities. It is suggested in the affidavit that the certified copy of the Roznama needs to be screened and scanned because certain pages appear to have been replaced and interpolated. In the last paragraph she has said that she reiterates and confirms that she never had an intention to commit any act of contempt and if this court comes to the conclusion that her statement made in the affidavit amounts to any act of contempt she tenders an unconditional apology to this court. She has prayed that notice issued to her be dropped.

5. On 28/3/2007 this court also directed the office to issue notice to Mrs. Pillai advocate of the petitioner asking her to remain present in the court.

6. From the affidavit of the petitioner it appears that whatever statements the petitioner has made are on the instructions of her lawyer. Her lawyer Mr. Pillai has confirmed this fact in the court today. In the circumstances, we feel that it

cannot be said that the petitioner had willfully committed any contempt of court. We are unable to come to a conclusion that the petitioner has willfully committed any act which scandalise or tends to scandalise or lower the authority of the court or which interferes or tends to interfere with the due course of any judicial proceeding and tends to interfere with or obstructs or tends to obstruct, the administration of justice. Besides we must note that the petitioner has tendered unconditional apology to this court. In the facts of the case, we are of the opinion that the apology tendered by the petitioner is bonafide. We have no hesitation in accepting it. We accept the apology. We are of the opinion that contempt notice issued against her deserves to be discharged.

7. That takes us to the second aspect of the matter namely the fact that the affidavits are filed by the petitioner admittedly on the instructions of her lawyer. We have already noted that her lawyer Mr. Pilla, who is appearing as counsel of Mrs. Pillai has confirmed this fact before us. We have heard him also at some length. We must note that at the outset he told us that he holds the judiciary in high esteem and he can never

think of doing any thing which would bring it in disrepute or scandalise it's authority or prejudice or interfere with any judicial proceedings or obstruct the administration of justice in any manner. He maintained that when he took inspection of the roznama, there were certain blanks and, therefore, as a lawyer he felt that this fact should be brought to the notice of the court. He submitted that he asked the petitioner to file affidavit, bonafide believing that he was asking her to file affidavit in the interest of proper administration of courts in general. The learned counsel contended that in any case if this court comes to a conclusion that the affidavit of the petitioner contains contumacious material, he has no hesitation in taking the responsibility on himself and in that case he wishes to tender unconditional apology. Undoubtedly the averments are not happily worded. But in view of the explanation given by Mr. Pillai and apology tendered by him, we feel that contempt notice deserves to be discharged. We accept the unconditional apology tendered by Mr. Pillai which appears to us to be bonafide.

8. We note that as directed by this court the

advocate on record Mrs. Madhavi Pillai is present in the court. Mrs. Pillai has also tendered unconditional apology to this court. We find her apology to be genuine and bonafide. We accept it.

9. It appears that when this court perused the

Roznama it found it to be in order. It is quite possible that progress of the matter was noted by the concerned person separately and Roznama was written later on to avoid mistakes. It is however, not necessary to go into this aspect because the observation of this court that Roznama on the date purported not to have been written is found written in the record must be accepted as the last word. There appears to be some bonafide mistake and in the facts of this case, it is not necessary to unnecessarily magnify the issue particularly when the petitioner and her advocates have tendered unconditional apology.

10. Admittedly interim order has been vacated. The possession of the premises is already with the respondent. We feel that perhaps the petition has become infructuous. However, we will only confine

ourselves to the contempt petition.

11. In the peculiar facts and circumstances of the case and considering the explanation given by the petitioner and her learned counsel and apologies tendered by them, we feel that contempt notice issued by this court deserves to be discharged. The contempt notice is accordingly discharged and the contempt petition is disposed of.

JUDGE.

JUDGE.